IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Banshidhar Chela v. State of Raj. & Ors.

S.B.CIVIL WRIT PETITION NO.578/1993
under Article 226 of the Constitution of India.

Date of Order : 1st March, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Girish Joshi, for the petitioner.
Mrs.Raghuraj Kanwar, Addl. Govt. Advocate.

BY THE COURT :

This writ petition is preferred by the petitioner assailing validity and propriety of the judgment dated 16.1.1993 passed by District Judge, Bikaner whereby the appeal preferred by the petitioner under Section 9 of the Rajasthan Public Premises (Eviction of unauthorised Occupants) Act, 1964 (hereinafter referred to as “the Act of 1964”) was rejected and the order dated 7.6.1986 passed by the Estate Officer was affirmed.

The facts giving rise to present petition are as follows:-

That a temple popularly known as “Shri Reghunathji Ka Mandir” was constructed by the

erstwhile State of Bikaner. According to the petitioner Late Shri Ranchhoddasji was Mahant of the said temple. Shri Ranchhoddasji died in the year 1960, however, in his life time Shri Ranchhoddasji executed an adoption deed and adopted the petitioner as his disciple for the purposes of temple Shri Raghunathji. After death of Shri Ranchhoddasji a report was made by the Inspector of Devsthan Department, Bikaner recommending Assistant Commissioner, Devsthan to recognise the petitioner as Mahant in place of Shri Ranchhoddasji in light of deed of adoption referred above. It is stated by the petitioner that with view to carry out affairs of temple in effective manner he by an order dated 1.7.1984 appointed Shri Bhanwarlal Swami as Manager of the temple and Shri Manoj Kumar Swami as its pujari. A copy of the order dated 1.7.1984 was said to be sent to the Commissioner, Devsthan as well as to the Assistant Commissioner, Devsthan by the petitioner.

The contention of the petitioner is that a notice under Section 4(1) of the Act of 1964 was issued by the Estate Officer in name of Shri Dwarkadas Swami treating him an unauthorised occupant of the property attached with the temple of Shri Raghunathji. According to the petitioner Shri Dwarkadas was neither a Mahant nor was ever appointed as pujari. Of course, being father of the petitioner aforesaid Dwarkadas lived with him in the premises in question. Aforesaid Shri

Dwarkadas after receiving notice under Section 4 (1) of the Act of 1961 vide his letter dated 18.8.1987 conveyed to the Estate Officer that he is not at all concerned with the Estate nor he is in possession of the premises in question. The Estate Officer without verifying the facts with regard to possession over the premises in question passed an order dated 7.6.1986 making an order of eviction of Shri Dwarkadas Swami from the premises and further passed an order to pay sum of Rs.500/- per month against the rent since 25.6.1981. The petitioner on knowing about the order dated 7.6.1986 preferred an appeal before the District Judge, Bikaner under Section 9 of the Act of 1964 with an application seeking permission to file and maintain the appeal as he was not party to the proceedings before the Estate Officer. The District Judge, Bikaner rejected the appeal by order dated 16.1.1993 holding the same barred by limitation. The District Judge also held that there was no evidence available on record to show that the petitioner was having possession over the premises in question when the notice under Section 4(1) of the Act of 1964 was issued by the Estate Officer.

Being aggrieved by the order dated 16.1.1993 and the order passed by the Estate Officer dated 7.6.1986 this writ petition is preferred.

I have heard counsel for the parties.

The contention of counsel for the petitioner is that under Section 4(1) of the Act of 1964 a notice is required to be given by the Estate Officer to all persons concern if he is of opinion that any person or persons are in unauthorised occupation of any public premises and they should be evicted. According to the petitioner he was a person concerned being Mahant of the temple and having possession over the property in question, therefore, it was an obligation upon the Estate Officer to issue and serve a notice under Section 4(1) of the Act of 1964.

Counsel for the respondents stated that no notice under Section 4(1) of the Act of 1964 was required to be issued to the petitioner as he was never accepted as Mahant of the temple and he was also not having possession over the premises in question. Counsel for the respondents, however, failed to give any explanation with regard to recommendation made by the Inspector, Department of Devsthan to recognise the petitioner as a Mahant of temple Shri Raghunathji. The petitioner has also placed on record a copy of adoption deed, a reference of which was also given by him before the District Judge adjudicating the appeal under Section 9 of the Act of 1964.

The question as to whether the petitioner was Mahant of the temple or not was not

to be decided either by the Estate Officer or by the District Judge exercising powers under the Act of 1964. However, when the petitioner claimed himself to be a Mahant of the temple then certainly he was a person concerned with affairs of the premises in question. It is pertinent to note that the Inspector of Devsthan made a recommendation to the Assistant Commissioner to recognise petitioner as Mahant of temple Shri Raghunathji, therefore, it cannot be said that the Estate Officer was not aware of the fact regarding claim of the petitioner to be Mahant of temple Raghunathji. In view of it there is no doubt that the petitioner was a person concerned to whom notice under Section 4(1) of the Act of 1964 was required to be issued.

Looking to the finding above, the writ petition succeeds and, therefore, is allowed. The orders passed by the Estate Officer dated 7.6.1986 and by the District Judge, Bikaner dated 16.1.1993 in Appeal No.118/87 are hereby quashed. The Estate Officer is hereby directed to decide the proceedings under the Act of 1964 afresh. The Estate Officer is further directed to conclude the proceedings under Section 5 of the Act of 1964 within a period of six months from today. The petitioner is directed to report before the Assistant Commissioner, Devsthan, Bikaner on 21.3.2005 to accept notice under Section 4(1) of the Act of 1964.

No order as to cost.

(GOVIND MATHUR),J.

kkm/ps.